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C O N F I D E N T I A L SECTION 01 OF 02 KABUL 000539

SIPDIS

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TAGS: PREL PGOV AF

SUBJECT: GUESS WHO'S NOT COMING TO DINNER?

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Classified By: Acting Deputy Ambassador Joseph A. Mussomeli; Reasons 1.
4 (b) and (d)

¶1. (C) Summary: We have learned that President Karzai has decided to leave unfilled the Upper House's 34 seats allocated to District Council members in the next legislative session, which will convene on 20 February. Because District Council elections have never been held, the 34 MPs reserved for District Council members were filled in the last Parliamentary session by members of the Provincial Councils. As a result of Karzai's decision not to replace these MPs, one third of the Upper House's seats will remain empty until District Council elections are held. End Summary.

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Upper House Composition
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¶2. (U) The Upper House, or Meshrano Jirga (MJ), consists of 102 MPs (three from each of Afghanistan's 34 provinces), none of whom are directly elected by Afghans. According to the Constitution, the President appoints 34 Upper House MPs (one from each province), another 34 come from the Provincial Councils (one from each Provincial Council) and are selected by fellow Provincial Council members. The final 34 should come from the District Councils and are selected in the same manner as those from the Provincial Councils.

¶3. (U) To date, however, Afghanistan has not held District Council elections. In 2005 President Karzai issued a decree directing that the 34 MPs that would have otherwise been appointed by the District Councils would instead come from membership of the Provincial Councils. As a result, 68 of the 102 Upper House MPs in the past legislative session came from the Provincial Councils. District Council elections were scheduled to be held concurrently with the 2010 Parliamentary elections, but the challenges facing District Council elections (security, budget, and the fact that many district boundaries are more notional than real) have prompted the government to defer these elections. No alternative date for District Council elections are being discussed.

¶4. (C) Afghan interlocutors told us in December that, for the upcoming Parliamentary session, the 34 MPs the District Councils should appoint, would again come from the ranks of the Provincial Councils. Therefore, the 34 Provincial Councils would select two members to the Upper House. However, on February 8, Upper House MP Hossaini advised PolOff that in late January President Karzai had decided that the 34 Upper House MPs allocated to District Council members will not be seated until District Council elections are held.

In the meantime, the Upper House will consist of the 34 Karzai-appointed MPS plus the 34 selected by the Provincial Councils.

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A Stool with Two Legs
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¶ 15. (C) PolOff met with Upper House MP Muzaafari on February 10 to obtain more information on this unexpected turn of events. Muzaafari said he had attended the meeting where the decision was made not to seat the 34 MPs allotted to the District Councils. President Karzai, his two Vice Presidents and representatives from the Lower House, the Ministry of Justice and the Independent Election Commission (IEC) also attended the meeting. President Karzai proposed issuing a decree announcing that the 34 MPs selected by District Council members would instead be selected from among the Provincial Councils (mirroring his action in 2005).

¶ 16. (C) Muzaafari said meeting participants determined that Karzai's plan to seat 68, rather than 34, MPs from the Provincial Councils violated the Constitution. Allowing the Provincial Councils to seat two members, according to Muzaafari, "Would mean that 34 MPs would enter the Meshrano Jirga through the front door and 34 would enter through the window". According to Muzaafari, Karzai heartily endorsed this position, declaring that rather than issue a Presidential decree contravening the Constitution, it would be better to leave the 34 seats allocated to District Council members empty for the next legislative session.

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Who Wins?
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¶ 17. (C) Comment: One consequence of this decision is that Karzai will own outright the votes of 34 of the 68 MPs in the Upper House and can always count on the support of some

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number of the other 34. Further, with one third of its membership not seated, the Upper House will constantly teeter on the edge of failing to make a quorum. With a normal membership of 102 MPs, 52 MPs must be present to make a quorum, a number precariously close to the 68 seated in the Upper House. Karzai's ability to influence his supporters' attendance to, or votes during, Upper House sessions places dangerous limitations on its ability to act independently of the President.

¶ 18. (C) Curiously, although this decision was made prior to the London Conference, it hasn't been publicized at all. Provincial Councils are apparently ignorant that they are to select only a single MP and not two. According to our tally, over half of Afghanistan's 34 Provincial Councils have already selected two members who will they expect will be seated in the Upper House. It is unclear when, or how, these prospective MPs will be told that only one of their number will be seated. End Comment
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